

Message Text

SECRET

PAGE 01 GENEVA 02185 01 OF 04 272036Z

67

ACTION SS-25

INFO OCT-01 ISO-00 /026 W

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FM USMISSION GENEVA

TO SECSTATE WASHDC 1726

S E C R E T SECTION 1 OF 4 GENEVA 2185

EXDIS

STADIS////////////////////////////////////

FOR DEPUTY SECRETARY INGERSOLL AND UNDER SECRETARY MAW

FROM AMB MOORE AND THOMAS A. CLINGAN

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: LOS

1. THERE FOLLOWS MEMCON OF MOORE-CLINGAN TALKS WITH
ECUADOREANS IN GENEVA. WE EXPECT TO FOLLOW THROUGH WITH
ANOTHER MEETING IN NEXT FEW DAYS.

QUOTE: MEMCON, WEDNESDAY, MARCH 19, 1975, 3:30 P.M.

PLACE: U.S. DELEGATION OFFICE, GENEVA

PARTICIPANTS: U.S. - AMB. JOHN NORTON MOORE, DEPUTY
SPECIAL REPRESENTATIVE OF THE PRESIDENT FOR LAW OF
THE SEA NEGOTIATIONS; THOMAS A. CLINGAN, DEPUTY ASSIST-
ANT SECRETARY, OES/OFA; JOHN L. MARTIN, ARA-LA/PLC.

ECUADOR - AMB. RAFAEL GARCIA VELASCO; SR. JOSE AYALA
LASSO, DIR. MINISTRY OF FOREIGN AFFAIRS; CDR. RAUL
JARAMILLO DEL CASTILLO.

FOLLOWING PLEASANTRIES:

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SECRET

PAGE 02 GENEVA 02185 01 OF 04 272036Z

MOORE: IT IS SIGNIFICANT THE LATEST DRAFT EVENSEN TEXT HAS OMITTED ARTICLES ON HIGHLY MIGRATORY SPECIES AND SALMON. THIS WAS TO ALLOW FOR FURTHER NEGOTIATION OF THESE ARTICLES BEFORE THAT COMMITTEE ADOPTED A POSITION. THAT GIVEN ADDED IMPORTANCE TO OUR EFFORTS.

GARCIA: WE EXPLAINED IN QUITO THAT OUR LAW IS RIGID AND SPECIFIC AND THIS DOES NOT LEAVE US THE POSSIBILITY TO DEPART IN OUR POSITION FROM THE LAW OF THE REPUBLIC. OUR LAW REQUIRES THAT WE MAINTAIN SOVEREIGNTY WITHIN 200 MILES. NEVERTHELESS, WE RECEIVED WITH GREAT INTEREST THE PROPOSED ARTICLE WHICH YOU LEFT WITH US IN QUITO AND WE BELIEVE THE EVENSEN GROUP IS EXERCISING A VERY IMPORTANT ROLE IN THE NEGOTIATIONS. THERE ARE TWO OR THREE IMPORTANT COUNTRIES OF THE REGION PARTICIPATING IN THE EVENSEN GROUP. FOR THIS REASON WE SAW IN YOUR PROPOSAL A VERY INTERESTING POSSIBILITY. WE REALLY HAVEN'T BEEN ABLE TO TAKE AN OFFICIAL POSITION ON THE FIRST OR SECOND DRAFTS OF THE ARTICLE YOU PRESENTED TO US IN QUITO, BUT PERSONALLY AS MEMBERS OF THE ECUADOREAN DELEGATION WE HAVE WANTED TO RESPOND. WE HAVE PREPARED A REVISION OF THE ARTICLE WHICH IS INFORMAL -- IS NOT OFFICIAL -- BUT WILL GIVE YOU OUR THINKING OF HOW THIS MIGHT MEET THE POSITION OF THE ECUADOREAN GOVERNMENT AND OTHER STATES OF THE REGION.

WE WOULD BE INTERESTED TO HAVE YOUR CONSIDERATION OF THIS PERSONAL ATTEMPT TO BE RESPONSIVE WHICH WE HAVE PREPARED HERE TO SEE IF YOU MIGHT BE INTERESTED IN ADOPTING IT TO PROMOTE IN THE EVENSEN GROUP. THIS OFFERS A POSITION WHICH WOULD BE ROUGHLY EQUIDISTANT BETWEEN THE EXTREME POSITIONS ON BOTH SIDES AND THEREFORE MIGHT PROVIDE THE BASIS FOR ADOPTION. THIS PROVISIONAL DRAFT ARTICLE DOES NOT REPRESENT A CHANGE IN POSITION OF OUR GOVERNMENT. WE HAVE NOT CHANGED POSITIONS. HOWEVER, WE THINK IT MIGHT BE TAKEN INTO CONSIDERATION FOR ADOPTION IN THE EVENSEN GROUP.

(AMB. AYALA THEN READ THE ARTICLE AS FOLLOWS:)

1. THE COASTAL STATE, WITHIN A LIMIT NOT EXCEEDING
SECRET

SECRET

PAGE 03 GENEVA 02185 01 OF 04 272036Z

200 MILES, SHALL REGULATE FISHING FOR TUNA AND OTHER SPECIES MENTIONED IN ANNEX A.

BEYOND THAT LIMIT, FISHING FOR SUCH SPECIES SHALL BE REGULATED BY THE AUTHORITY OR THE REGIONAL FISHING ORGANIZATIONS, AS APPROPRIATE.

(HE COMMENTED:) THE FIRST PART IS A NEUTRAL FOR-

MULATION WHICH CAN BE ACCEPTED BY THE GOE. THE REGULATION BEYOND 200 MILES IS NEEDED BECAUSE THE TUNA SWIM FROM COAST TO COAST ACROSS THE OCEANS.

2. FOR THE PURPOSE OF CONSERVATION AND PROTECTION OF THE SPECIES INCLUDED IN ANNEX A, THE COASTAL STATES OF EACH REGION SHALL COOPERATE IN THE ESTABLISHMENT OF AN ADEQUATE REGIONAL FISHING ORGANIZATION. (HE COMMENTED:) APPROPRIATE REGIONAL ORGANIZATIONS MIGHT BE ADOPTED FOR THE EASTERN PACIFIC OR THE WESTERN PACIFIC, OR THE ATLANTIC OR THE INDIAN OCEAN FOR EXAMPLE. HOWEVER, BECAUSE THE SITUATIONS OF THESE REGIONS WOULD BE DIFFERENT, SEPARATE REGIONAL ORGANIZATIONS WOULD BE NEEDED.

3. THE REGIONAL FISHING ORGANIZATION SHALL FORMULATE RECOMMENDATIONS, BASED ON AVAILABLE SCIENTIFIC EVIDENCE, CONCERNING THE MAXIMUM PERMISSIBLE CAPTURE AND OTHER CONSERVATION MEASURES WITHIN THE REGION, WITH RESPECT TO THE SPECIES LISTED IN ANNEX A.

4. THE COASTAL STATES SHALL TAKE INTO ACCOUNT THE RECOMMENDATIONS OF THE ORGANIZATION WITH RESPECT TO CONSERVATION MEASURES AND ESTABLISHMENT OF CORRESPONDING PERMITS AND FEES FOR THE FISHING OF FOREIGN FLAG VESSELS, WITH THE VIEW OF ACHIEVING UNANIMITY WITHIN THE REGION. EQUALLY THEY SHALL TAKE INTO ACCOUNT THE ORGANIZATION'S RECOMMENDATIONS REGARDING THE ADOPTION OF A UNIFORM SYSTEM OF PENALTIES FOR VIOLATION OF THE FISHING LAWS AND REGULATIONS BY FOREIGN FLAG VESSELS.

5. THE COASTAL STATES SHALL SEEK THE COOPERATION OF THE ORGANIZATION FOR THE ELABORATION OF NORMS WHICH (WILL) OBTAIN THE MAXIMUM UTILIZATION OF THE RESOURCES WHICH ARE REFERRED TO IN ANNEX A, TAKING INTO ACCOUNT
SECRET

SECRET

PAGE 04 GENEVA 02185 01 OF 04 272036Z

THEIR EFFECTS ON OTHER RELATED OR DEPENDENT SPECIES.

6. NOTHING IN THIS ARTICLE SHALL LIMIT THE RIGHT OF THE COASTAL STATE TO:

A. RESERVE FISHING AREAS FOR ITS NATIONALS;

B. CONCLUDE ASSOCIATION CONTRACTS OR OTHER ARRANGEMENTS WITH FOREIGN FLAG VESSELS.

C. PROHIBIT THE EXPLOITATION OF MARINE MAMMALS.

7. THE COASTAL STATE HAS THE RIGHT, WITHIN A LIMIT WHICH DOES NOT EXCEED 200 MILES, TO ADOPT MEASURES NECESSARY TO ASSURE COMPLIANCE WITH ITS REGULATIONS, INCLUDING

ING BOARDING, INSPECTION, DETENTION, AND JUDICIAL PROCEEDINGS. SUCH MEASURES MUST NOT BE DISCRIMINATORY. THE DETAINED VESSELS SHALL BE ABLE TO SAIL PROVIDED A REASONABLE BOND IS POSTED AND OTHER ASSURANCES ARE MADE PENDING COMPLETION OF THE REQUIRED LEGAL DISPOSITION. THE COASTAL STATES, IN CONFORMITY WITH THE CONDITIONS OF PARAGRAPH FOUR, MAY AGREE THAT INFRACTIONS OF THE FISHING REGULATIONS SHALL NOT BE PENALIZED WITH PRISON FOR THE CAPTAINS OR CREW OF THE RESPECTIVE VESSELS.

8. THE STATES, ACTING THROUGH THE ORGANIZATION, SHALL AGREE ON EFFECTIVE MEASURES IN ORDER TO ENFORCE THE APPLICABLE REGULATIONS BEYOND THE LIMIT REFERRED TO IN PARAGRAPH ONE. END OF ARTICLE.

WE HAVE TRIED TO USE YOUR IDEAS AND TO EXPRESS THEM IN OUR FASHION IN A WAY DESIGNED TO BE ACCEPTABLE IN THE CONFERENCE.

AYALA: I WOULD LIKE TO SUPPORT AMB. GARCIA. WE ARE NOT NOW READY TO REACH AN AGREEMENT. WE ARE NOT YET READY FOR JOINT SUPPORT. HOWEVER, WE HAVE FOLLOWED YOUR WORK IN THE EVENSEN GROUP AND BELIEVE THAT THESE IDEAS COULD BE HELPFUL. THEY ARE PROVISIONAL AND INFORMAL. WE HAVE THE IDEA YOU COULD SPONSOR THE DRAFT. IF YOU DID, BECAUSE OF YOUR INFLUENCE IT WOULD OPEN
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SECRET

PAGE 05 GENEVA 02185 01 OF 04 272036Z

SOME DOORS AND ASSURE CERTAIN CHANGES. WITH REGARD TO THE FIRST TWO PARAGRAPHS WE HAVE PICKED UP YOUR POSITION REGARDING REGIONAL ORGANIZATIONS. WE HAVE ELIMINATED REFERENCE TO TRADITIONAL PARTICIPANTS. BUT YOU WOULD BE INCLUDED IN THE REGIONAL ORGANIZATION. IT IS BETTER FOR JUST THE COASTAL STATES TO BE MEMBERS. IT WOULD BE MORE EQUITABLE. THE GEOGRAPHIC FACTOR IS IMPORTANT AND MUST BE RECOGNIZED FOR IT TO BE EQUITABLE. WE MAY ONE DAY WANT TO FISH IN OTHER REGIONS BUT NOW WE ARE INTERESTED IN FISHING OUR OWN TERRITORIAL WATERS AND LATER PERHAPS ELSEWHERE IN THE REGION.

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SECRET

PAGE 01 GENEVA 02185 02 OF 04 272057Z

67

ACTION SS-25

INFO OCT-01 ISO-00 /026 W

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TO SECSTATE WASHDC 1727

S E C R E T SECTION 2 OF 4 GENEVA 2185

EXDIS

STADIS////////////////////////////////////

FOR DEPUTY SECRETARY INGERSOLL AND UNDER SECRETARY MAW

FROM AMB MOORE AND THOMAS A. CLINGAN

REGARDING THE THIRD PARAGRAPH YOU STATE THAT "STATES, ACTING THROUGH THE ORGANIZATION, SHALL AGREE..." OUR APPROACH IS THAT THE ORGANIZATION WILL FORMULATE RECOMMENDATIONS WHICH THE STATES MAY THEN ADOPT. FROM A PRACTICAL POINT OF VIEW ANY STATE WHICH IS TRULY INTERESTED IN CONSERVATION WILL BE OBLIGED TO FOLLOW THE RECOMMENDATIONS OF THE ORGANIZATION. IN THIS FASHION WE SAVE OUR POSITION ON THE QUESTION OF SOVEREIGNTY. ON NUMBER FOUR, WE HAVE NO PROBLEM ON THE RIGHT OF STATES TO ADOPT UNIFORM LICENSES AND FEES AND FINES FOR VIOLATIONS. OURS ARE THE HIGHEST IN THE REGION. WE SAY IT SHOULD BE THE AIM OF STATES TO REACH UNIFORMITY OF THIS.

REGARDING NUMBER FIVE, WE FEEL THAT MEASURES TO OBTAIN MAXIMUM SUSTAINABLE YIELD SHOULD BE TAKEN INTO CONSIDERATION BUT CANNOT BE ACCEPTED AS AN OBLIGATORY RULE. OTHERWISE IT COULD ACT NEGATIVELY ON THE DEVELOPMENT OF NATIONAL FISHING FLEETS. WE WOULD BE WILLING TO FOLLOW NORMS AND WOULD BE OPEN TO RECOMMENDATIONS BASED UPON SCIENTIFIC EVIDENCE. WE COULD SUPPORT MAXIMUM OR OPTIMAL UTILIZATION BUT NOT FULL UTILIZATION.

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SECRET

PAGE 02 GENEVA 02185 02 OF 04 272057Z

ON NUMBER SIX, WE HAVE KEPT TWO OF YOUR PRINCIPLES BUT WE HAVE ELIMINATED THE REFERENCE TO A FORTY-MILE ZONE. THAT WAS OFFERED BY YOU BASED ON OUR LAW. BUT IT IS BETTER TO HAVE NO REFERENCE OF THIS KIND BECAUSE THIS WILL BE FOR OTHER STATES OF THE REGION AS WELL. UNDER

OUR CONCEPT OF SOVEREIGNTY WE ALWAYS HAVE THE RIGHT TO RESERVE ANY AREA, NOT JUST FORTY MILES, FOR OUR FISHERMEN.

PARAGRAPH NUMBER SEVEN SHOULD PRESENT NO PROBLEM. WE ACCEPT POSTING BOND AS AN INTERESTING IDEA AS LONG AS IT ACCORDS WITH NATIONAL REGULATIONS. WE HAVE NO DIFFICULTY IN ACCEPTING THAT THERE BE NO IMPRISONMENT OF CAPTAIN AND CREW. HOWEVER, WE CAN'T ACCEPT IT AS A BINDING RULE OF THE ORGANIZATION. IF IT IS DISCRETIONARY IN TERMS "WILL TRY TO AGREE" WE CAN ACCEPT IT. WE DO NOT HAVE ANY LAW WHICH REQUIRES IMPRISONMENT.

FIANLLY, WE HAVE TAKEN YOUR LAST POINT WITH REGARD TO ENFORCEMENT BEYOND THE LIMIT OF THE ZONE. WE HAVE OFFERED THIS DRAFT AS WE WANT TO COOPERATE WITH YOU IN THE CONFERENCE.

MOORE: INFORMALLY ALSO I WOULD LIKE TO STATE THAT IT APPEARS YOU HAVE MADE A VERY CONSTRUCTIVE EFFORT IN WHAT YOU HAVE PRESENTED TO US. OF COURSE YOU REALIZE YOUR PROPOSAL HAS SOME SIGNIFICANT DIFFERENCES FROM OUR PROPOSAL, AND I WOULD LIKE TO ASK SOME QUESTIONS TO CLARIFY WHAT IS INTENDED ON VARIOUS POINTS. YOUR CONSTRUCTIVE EFFORT IS EVIDENT AND WE ARE INTERESTED IN WORKING WITHIN THE EVENSEN GROUP TOWARD ADOPTING A SATISFACTORY TEXT ON THIS SUBJECT. IF WE CAN ARRIVE AT A JOINT SOLUTION WE WILL HAVE MADE A MAJOR FIRST STEP.

IN THE FIRST PARAGRAPH THERE IS REFERENCE TO THE AUTHORITY OR REGIONAL ORGANIZATIONS. YOU KNOW THE TREND IN THE NEGOTIATIONS IS TO CONFINE THE SCOPE OF THE AUTHORITY TO THE DEEP SEABED. I ASSUME THIS WOULD NOT PRESENT A PROBLEM FOR YOU AND THAT A REGIONAL FISHERY ORGANIZATION AS OPPOSED TO THE AUTHORITY WOULD BE
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SECRET

PAGE 03 GENEVA 02185 02 OF 04 272057Z

ACCEPTABLE.

AYALA: IF THERE IS TO BE AN INTERNATIONAL SEA AS WE AND OTHERS HAVE PROPOSED WE WILL NEED INTERNATIONAL STANDARDS. WE REALIZE THAT THIS INTERNATIONAL SEA PROPOSAL HAS NOT BEEN ACCEPTED, BUT WE SIMPLY WANTED TO STATE THIS POINT OF VIEW.

MOORE: IF SEVERAL STATES OF THE REGIONA OPPOSED THIS IDEA, -- IF IT WERE NOT ADOPTED -- IF OTHERS DID NOT WANT THIS DRAFT ARTICLE TO MENTION THE AUTHORITY, COULD YOU AGREE TO THAT? YOU REALIZE THIS REFERENCE

TO THE AUTHORITY PRESENTS US WITH A MAJOR PROBLEM.

AYALA: WE WERE ONLY INCLUDING OUR POINT OF VIEW. IT IS A POSITION THAT WE LATER COULD ACCEPT OR REJECT. WE ARE TRYING TO REACH A COMMON BASIS. YOU KNOW WE ARE NOT MEMBERS OF THE EVENSEN GROUP SO WE COULDN'T CONTROL THIS. WE THOUGHT IT SHOULD BE CONSIDERED. IF LATER ON THIS POSITION PRESENTED A PROBLEM WE COULD ACCEPT A REGIONAL CONSERVATION ORGANIZATION.

MOORE: YOUR SECOND PARAGRAPH REFERS TO "COASTAL STATES OF THE REGION". IN OUR REGION WOULD CANADA BE INCLUDED?

AYALA: THAT DESERVES STUDY. THE REGION COULD BE BASED ON EITHER GEOGRAPHICAL OR ECOLOGICAL FACTORS.

GARCIA: WE WOULD PREFER A GEOGRAPHICAL REGION. THAT SEEMS MORE APPROPRIATE. I HEARD THE IDEA IN OTTAWA AT THE LAST IATTC MEETING FROM A MEXICAN DELEGATE. THEY PROPOSED A REGIONAL ORGANIZATION. THEY SAY CURRENT IATTC MEMBERSHIP MUST BE CONSIDERED PROVISIONAL. FOR EXAMPLE, THEY SAID FRANCE AND JAPAN SHOULD NOT BE MEMBERS OF THE ORGANIZATION. THEY COULD COME AND FISH BUT NOT BE MEMBERS. MEXICO IS PLANNING A RENEGOTIATION ALONG THIS LINE.

MOORE: GIVEN YOUR INTEREST IN PARTICIPATING IN OTHER AREAS, HOW STRONGLY DO YOU FEEL ABOUT THE FISHERY ORGANIZATION BEING LIMITED ONLY TO COASTAL STATES OF THE
SECRET

SECRET

PAGE 04 GENEVA 02185 02 OF 04 272057Z

REGION?

AYALA: VERY STRONG. OUR FIRST CONCERN IS TO BE A MEMBER OF A REGIONAL ORGANIZATION. THIS DOES NOT MEAN OTHER STATES WILL NOT BE ABLE TO FISH IN THE REGION BUT THEY WILL NOT TAKE PART IN THE MANAGEMENT OF THE RESOURCE. COASTAL STATES HAVE SPECIAL INTERESTS IN THE RESOURCES OF THE REGION. THEY SHOULD HAVE FIRST PREFERENCE. LATER IF THERE ARE FISH LEFT AND OTHERS WANT TO FISH THAT'S OKAY. BUT THE REGIONAL ORGANIZATION WILL SET THE STANDARDS.

MOORE: YOU TALKED ABOUT FULL UTILIZATION. DO YOU MEAN THAT FIRST PREFERENCE WOULD GO TO THE STATES OF THE REGION BUT THAT OTHERS COULD COME IN IF ALL THE STOCK WERE NOT BEING UTILIZED?

AYALA: THAT'S RIGHT.

MOORE: SO YOUR PROBLEM WITH OTHER STATES BEING MEMBERS
OF THE ORGANIZATION IS THAT YOU MIGHT BE OUTVOTED? IS
VOTING THE PROBLEM?

AYALA: NO. IT'S A QUESTION OF PRINCIPLE. THERE ARE
PERHAPS ONLY TWO COUNTRIES IN THE REGION WHICH ARE
POSSIBLY INTERESTED IN DISTANT WATER FISHING. THE OR-
GANIZATION OF STATES IN THIS REGION SHOULD TAKE INTO
CONSIDERATION THE INTERESTS OF THE STATES OF THE REGION.

MOORE: WOULD THIS PRINCIPLE AS YOU SEE IT PERMIT SOME
FORM OF OBSERVER STATUS FOR OTHER FISHING STATES? IF
THEY COULD PARTICIPATE IN THE FISHERY UNDER FULL UTILI-
ZATION, COULDN'T THEY PARTICIPATE IN THE ORGANIZATION
BUT NOT VOTE?

AYALA: NO. THEY HAVE THE OPPORTUNITY TO PARTICIPATE
THROUGH ASSOCIATION AGREEMENTS. NOTHING PROHIBITS THIS.
BUT THIS WOULD NOT GIVE A RIGHT TO PARTICIPATE IN THE
ORGANIZATION.

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PAGE 01 GENEVA 02185 03 OF 04 272122Z

67

ACTION SS-25

INFO OCT-01 ISO-00 /026 W
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R 271945Z MAR 75
FM USMISSION GENEVA
TO SECSTATE WASHDC 1728

SECRET SECTION 3 OF 4 GENEVA 2185

EXDIS

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FOR DEPUTY SECRETARY INGERSOLL AND UNDER SECRETARY MAW

FROM AMB MOORE AND THOMAS A. CLINGAN

MOORE: I WAS THINKING OF SOMETHING OTHER THAN AN ASSOC-
IATION AGREEMENT AND NOT INCONSISTENT WITH IT. FOR EXAM-
PLE, WE HAVE INTERESTS IN PARTICIPATING IN THE FISHERY

OFF OF AFRICA. HOW COULD THIS BE MANAGED CONSISTENT WITH THE REGIONAL PRINCIPLE. COULDN'T A STATE ARRANGE TO ASSOCIATE WITH A REGIONAL ORGANIZATION AS AN OBSERVER OR IN SOME OTHER STATUS RATHER THAN IN ASSOCIATION WITH A STATE OF THE REGION?

AYALA: WE HADN'T THOUGHT ABOUT THAT. IF REGIONAL REGULATIONS WERE RESPECTED, I DON'T SEE ANY DIFFICULTY IN THAT KIND OF AGREEMENT.

MORRE: IT WOULD HAVE THE ADVANTAGE OF PROMOTING FULL UTILIZATION WHICH SHOULD MAXIMIZE THE PAYMENTS TO THE COASTAL STATES OF THE REGION.

WHEN YOU REFER TO THE ORGANIZATION PROMULGATING REGULATIONS AND FEES, YOU SAY YOU EXPECT ALL STATES TO COMPLY AS YOU SAY IT WOULD BE PRACTICALLY OBLIGATORY. BUT YOUR FORMULATION OF "TAKE INTO ACCOUNT" IS NOT SUFFICIENT AS WE FEEL THEY SHOULD BE OBLIGATORY. WE
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SECRET

PAGE 02 GENEVA 02185 03 OF 04 272122Z

MUST BE ABLE TO INSURE COMPLIANCE WITH CONSERVATION MEASURES. IF THIS LANGUAGE IS ADOPTED IN THE CONVENTION IT IS NOT A DEROGATION OF SOVEREIGNTY. DON'T WE NEED TO GO BEYOND "TAKE INTO ACCOUNT"?

AYALA: THIS IS DIFFICULT FOR US. THE EFFECT WILL PRACTICALLY BE THE SAME. IF THE STATED APPROVES A PROVISION IN THE ORGANIZATION IT SHOULD ADOPT THE SAME PROVISION IN ITS NATIONAL REGULATIONS. IN THIS WAY IT PROTECTS ITS SOVERIEGNTY.

MOORE: FORGIVE ME IF I SEEM TO BE PRESSING ON THIS. BUT, IF THIS MEASURE IS ADOPTED IN AN INTERNATIONAL AGREEMENT, HOW CAN IT BE A DEROGATION OF NATIONAL LAW? THIS SUPPORTS THE BASIS OF SOVEREIGNTY -- THAT STATES HAVE A RIGHT TO ENTER INTO INTERNATIONAL AGREEMENTS.

AYALA: THE PROBLEM WOULD BE IF THE ORGANIZATION DID NOT REFLECT OUR INTERESTS. NOW, IF THERE WERE UNANIMITY THAT WOULD BE A DIFFERENT MATTER, NO PROBLEM. HOWEVER, WE WOULD PREFER THE OTHER FORMULATION IN OUR DRAFT.

MOORE: WE MAY BE IN AGREEMENT THEN WE TOO WOULD LIKE TO SEE UNANIMITY IN THE ORGANIZATION.

AYALA: BUT, WE REALIZE EVEN THOUGH IT WOULD SATISFY OUR PROBLEM WITH SOVEREIGNTY, UNANIMITY COULD BOOMERANG ON US. UNANIMITY IN EFFECT MEANS A VETO, AND A VETO SYSTEM MIGHT KEEP US FROM GETTING WHAT WE WANT. THAT'S

WHY WE DECIDED THAT THE "TAKING INTO ACCOUNT" FORMULATION WAS BETTER.

MOORE: REGARDING PARAGRAPH SIX (A) WHICH ALLOWS FOR RESERVED AREAS, YOU COULD RESERVE THE ENTIRE 200 MILES FOR YOUR FISHERMEN. YOU COULD CLOSE THE AREA.

AYALA: I KNOW YOUR PROBLEM. WE HAVE A PROBLEM ON THE OTHER SIDE. WE KNOW THAT FORTY MILES WOULD BE UNACCEPTABLE IN A REGIONAL AGREEMENT.

MOORE: COULDN'T YOU JUST HAVE A PREFERENCE FOR
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SECRET

PAGE 03 GENEVA 02185 03 OF 04 272122Z

NATIONAL VESSELS FISHING WITH 200 MILES?

AYALA: WE ARE NOT TALKING ABOUT SOVEREIGN RIGHTS WITHIN FORTY MILES. OUR POSITION IS WE HAVE SOVEREIGNTY WITHIN 200 MILES, AND THESE FISH ARE TO BE CONTROLLED WITHIN AND OUTSIDE 200 MILES BY THE ORGANIZATION.

MOORE: WHAT I WONDERED WAS COULDN'T YOU JUST HAVE A SPECIAL PROVISION FOR YOUR NATIONAL VESSELS FISHING WITHIN 200 MILES RATHER THAN A RESERVED AREA?

AYALA: IN THEORY YOU ARE RIGHT THAT AN UNSPECIFIED RESERVED AREA COULD END UP AN EXCLUSIVE FISHING ZONE BUT IT WOULD NEVER HAPPEN IN PRACTICE. WE ARE NOW ALLOWING OTHERS TO FISH IN OUR WATERS.

JARAMILLO: IF WE ARE ACCEPTING A PRINCIPLE OF MAXIMUM CAPTURE, WE ARE ACCEPTING THAT OUR SEAS WILL BE OPEN TO OTHERS UP TO THAT AMOUNT.

AYALA: YEST, HE'S RIGHT. YOU SHOULD ALSO REMEMBER ONE OF THE MOST ELEMENTARY CONSERVATION MEASURES IS CLOSED AREAS.

MOORE: YOU MIGHT BE INTERESTED THAT IN DISCUSSIONS WE HAD WITH ANOTHER COUNTRY OF THE REGION, THEY SUGGESTED CONSIDERATION OF A PREFERENCE FOR COASTAL STATE FLAG VESSELS FISHING EXCLUSIVELY IN THE ECONOMIC ZONE. IF THIS WERE ADOPTED THERE WOULD BE NO NEED FOR CLOSING CERTAIN AREAS SUCH AS FORTY MILES. YOU WANT IN EFFECT AN EXCLUSIVE PREFERENCE FOR YOUR FISHERMEN. BUT SUPPOSE THERE WAS DIFFERENTIATION BETWEEN BOATS FISHING ONLY WITHIN 200 MILES AND THOSE THAT FISH BEYOND THIS AREA. THIS WAS SUGGESTED BY THIS OTHER STATE IN THE REGION AS A MEANS TO PROVIDE EXCLUSIVE FISHING FOR COASTAL STATE VESSELS FISHING SOLELY WITHIN THE ZONE.

AYALA: ARE YOU THINKING OF THE 600 NRT PROBLEM? THIS IS AN ACCEPTED MEANS OF CONSERVATION. BUT IF THE REGIONAL ORGANIZATION DID NOT DECIDE THIS WAS NECESSARY TO CONSERVATION, THEN THE STATES WOULD NOT ADOPT THIS SECRET

SECRET

PAGE 04 GENEVA 02185 03 OF 04 272122Z

PROVISION.

MOORE: NO, I MEANT SOMETHING ELSE. WE WANT FAIRNESS FOR THE COASTAL STATE FISHERMEN. ANOTHER WAY TO GET FAIRNESS RATHER THAN CLOSING AN AREA MAY BE TO HAVE AN EXCLUSIVE PREFERENCE FOR COASTAL STATE FISHERMEN IN THE ZONE.

AYALA: WE DON'T ACCEPT THE PRINCIPLE OF A PREFERENCE IN THE ZONE. WE CONSIDER WE HAVE SOVEREIGN RIGHTS. WE MUST CONSIDER THE INTERESTS OF ECUADOR'S FISHERMEN.

MOORE: I WANT TO BE QUITE CANDID. BASICALLY WE HAVE SIMILAR CONCEPTS OF THE NEED TO TAKE CARE OF OUR COASTAL FISHERMEN, BUT YOUR EXCLUSIVE ZONE LANGUAGE CAUSES A PROBLEM.

GARCIA: OUR FISHERMEN HAVE A COMPLEX WITH THEIR SMALL BOATS COMPARED TO YOUR ADVANTAGE IN TECHNOLOGY AND EQUIPMENT. THE COASTAL STATE HAS TO SAY TO ITS FISHERMEN IT WILL LOOK OUT FOR THEIR INTERESTS. BUT IF THIS IS ONLY A MATTER OF DRAFTING WE WILL NOT BE SUBBORN. WE WANT TO AVOID PROBLEMS. WE ARE LOOKING FOR A SOLUTION WHICH

WILL MEET OUR NEEDS.

MOORE: DO YOU MEAN IF THIS WERE HANDLED AS A CONSERVATION MEASURE AND AGREE IN THE REGIONAL ORGANIZATION, ECUADOR WOULD ADOPT THIS PROCEDURE?

AYALA: YES.

MOORE: ANOTHER POINT I'M NOT SURE I FULLY UNDERSTOOD WAS WITH REGARD TO IMPRISONMENT. WOULD THIS BE A MATTER AGREED TO BY THE ORGANIZATION?

AYALA: WELL WE TOOK YOUR POSITION BUT DELETED THE REFERENCE TO PROSECUTION BECAUSE WE HAVE PROSECUTION NOW. WE COULDN'T ELIMINATE THAT BUT WE DON'T WANT IMPRISONMENT. IT IS THE PROBLEM OF SOVERIGNTY AGAIN. THAT SECRET

SECRET

PAGE 05 GENEVA 02185 03 OF 04 272122Z

IS WHY WE SAY THE COASTAL STATE "MAY AGREE" NOT TO
IMPRISON FOR A VIOLATION.

MOORE: THAT IS WHY IT WOULD BE MUCH EASIER IF THE
ORGANIZATION OPERATED ON THE BASIS OF UNANIMITY. THEN
SOVEREIGNTY WOULDN'T BE A PROBLEM.

AYALA: GRAMMATICALLY SPEAKING YES -- BUT IT STILL WOULD
CAUSE A PRACTICAL PROBLEM. THIS APPROACH TO PROVIDE
DISCRETION WOULD BE MORE EFFECTIVE.

MOORE: I ALSO HAVE A FEW PROCEDURAL QUESTIONS. YOU
SAID YOU WOULD CONSULT WITH OTHER COUNTRIES. WE HAVE
NOT YET BEEN ABLE TO CONSULT WITH MEXICO. I TRIED TO
GET TOGETHER WITH AMBASSADOR CASTANEDA, BUT HIS FISH-
ERIES EXPERTS HAVE NOT YET ARRIVED. DID YOU CONSULT
WITH PERU AND CHILE?

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PAGE 01 GENEVA 02185 04 OF 04 272140Z

67

ACTION SS-25

INFO OCT-01 ISO-00 /026 W
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TO SECSTATE WASHDC 1729

S E C R E T SECTION 4 OF 4 GENEVA 2185

EXDIS

STADIS////////////////////////////////////

FOR DEPUTY SECRETARY INGERSOLL AND UNDER SECRETARY MAW

FROM AMB MOORE AND THOMAS A. CLINGAN

AYALA: BY AGREEMENT WITH PERU AND CHILE WE WERE OB-

LIGATED TO INFORM THEM.

MOORE: YOU SUGGEST PROCEDURALLY THIS COULD BE HANDLED IN THE EVENSEN GROUP. IF WE CAN WORK OUT AN AGREED ARTICLE HOW WOULD THIS BE DONE; BY A LATIN COUNTRY IN THE EVENSEN GROUP SUCH AS PERU?

AYALA: AS A PERSONAL OPINION, WE THINK THE EVENSEN GROUP IS DOING INTERESTING WORK, BUT WE ARE NOT PARTICIPATING IN IT. WE ARE NOT INCLINED TO ACCEPT THE WORK OF THE EVENSEN GROUP EXCEPT AS A BASIS FOR STUDY. HOWEVER, WE THINK THAT GROUP SHOULD BE ENLARGED.

MOORE: IT SHOULD BE ENLARGED. BUT WE ARE CONCERNED WITH ADOPTION OF THIS POSITION BY THE CONFERENCE AND WONDER HOW TACTICALLY WE SHOULD GET THIS STARTED IN THE EVENSEN GROUP. SHOULD IT BE SPONSORED BY PERU?

AYALA: WE THINK YOU CARRY THE MOST INFLUENCE IN THE GROUP. IF YOU COULD DO IT, IT WOULD ASSURE SUCCESS. BUT WE MUST SAY EVEN IF THE EVENSEN GROUP ADOPTS THIS
SECRET

SECRET

PAGE 02 GENEVA 02185 04 OF 04 272140Z

POSITION WE WON'T BE OBLIGED TO ACCEPT IT. IT WILL DEPEND ON THE GENERAL WORK OF THE CONFERENCE, OR, AS YOU SAY, ON THE "PACKAGE DEAL".

MOORE: THERE ARE TWO POSSIBILITIES. IF WE ASSUME ALL STATES OF THE REGION SUPPORTED THIS APPROACH AND A CONVENTION WERE VOTED THERE WOULD BE NO PROBLEM, BUT IF A CONVENTION WEREN'T ACHIEVED, DO YOU SEE A BASIS FOR A REGIONAL ORGANIZATION BASED ON OUR UNDERSTANDING? I REALIZE YOUR POSITION WOULD HAVE TO BE INFORMAL.

AYALA: THAT POSSIBILITY EXISTS BUT IT IS NOT EASY TO SAY. LET'S SAY ALL OF THE STATES OF THE REGION WERE IN AGREEMENT BUT THERE WAS NO CONVENTION, PERHAPS IT WOULD BE POSSIBLE TO HAVE A REGIONAL CONSERVATION CONVENTION. BUT IT WOULD HAVE TO PROVIDE FOR ECUADOR TO BE ABLE TO SAY IT WAS PROTECTING ITS SOVEREIGN RIGHTS IN THE TERRITORIAL SEA.

MOORE: MAYBE THAT COULD BE DONE IF YOU FOUND NEUTRAL LANGUAGE SUCH AS YOU HAVE ADOPTED IN YOUR FIRST PARAGRAPH. COULDN'T WE USE THIS?

GARCIA: YOUR DRAFT CREATED PROBLEMS FOR US IN THAT IT LIMITED OUR SOVEREIGN RIGHTS. WE DIDN'T LIKE THIS FORMULATION FOR THAT REASON.

MOORE: I MEANT USING A NEUTRAL FORMULATION SUCH AS YOURS. COULD YOU USE THAT KIND OF LANGUAGE IN ESTABLISHING AN INTERIM REGIONAL ORGANIZATION?

AYALA: IT WOULD DEPEND ON THE FRAMEWORK. WE WOULD LIKE TO SEE A CONVENTION IN WHICH A 200-MILE TERRITORIAL SEA IS ADOPTED.

MOORE: THAT'S PRETTY UNLIKELY. WE SHOULD BE SEEING

HOW WE WILL OPERATE IN THE ABSENCE OF THAT RESULT.

AYALA: VARIOUS THINGS ARE LINKED.

MOORE: WE UNDERSTAND YOUR PREFERENCE. BUT IN THIS
SECRET

SECRET

PAGE 03 GENEVA 02185 04 OF 04 272140Z

INFORMAL DISCUSSION YOU WOULDN'T RULE OUT DISCUSSING USING NEUTRAL LANGUAGE FOR ESTABLISHING A REGIONAL ORGANIZATION WOULD YOU? WE HAVE TO LOOK AT WHAT MAY HAPPEN. I AM LOOKING AT THIS NEUTRAL LANGUAGE OF YOURS IN PARAGRAPH ONE TO SEE IF IT WOULD BE POSSIBLE. IT MIGHT NOT PRESENT AN OBSTACLE.

AYALA: A REGIONAL AGREEMENT WITHOUT A TREATY IS DIFFICULT, AND OUR INTERNATIONAL POSITION IS WELL KNOWN. UNDER A MILITARY ASSISTANCE CUT-OFF WE CAN'T NEGOTIATE. THAT IS THE FIRST PROBLEM. TO OPEN THE DOOR THAT PROVISION SHOULD NOT BE APPLIED. PRESIDENT NIXON DECIDED NOT TO APPLY THIS PROVISION IN ORDER TO PROVIDE FOR NEGOTIATING POSSIBILITIES. IF THIS WERE DONE AGAIN IT WOULD PROVIDE A FIRST STEP. WE ARE ANXIOUS TO HAVE OUR RELATIONS ON THE BEST POSSIBLE BASIS. BUT OUR POSITION MUST BE RESPECTED.

MOORE: THAT IS HELPFUL OF COURSE. IT WOULD BE MOST USEFUL TO HAVE AN LOS TREATY WHICH WOULD ALLOW US TO WORK TOGETHER TOWARD A REGIONAL ORGANIZATION.

CLINGAN: I WOULD BE INTERESTED IN YOUR INTENTION REGARDING FEES. ARE YOU THINKING OF LICENSES OR FEES FOR FISH OR WHAT?

AYALA: WE ARE THINKING OF MATRICULAS AND LICENSES FOR THE REGISTERED SHIP TONNAGE AS IS PROVIDED IN ECUADOREAN LAW NOW.

CLINGAN: IF THERE WERE A DISAGREEMENT AS TO HOW MUCH FISH COULD BE CAUGHT, HOW WOULD THIS BE RESOLVED?

AYALA: THAT IS DIFFICULT TO SAY. WE ACCEPT SCIENTIFIC

DATA AS THE BASIS FOR THIS. WE SAY "EVIDENCE AVAILABLE"
IS A BASIS, BUT NOT BINDING.

GARCIA: FOR EXAMPLE, THE RUSSIAN AMBASSADOR, KOLOSOVSKY
VISITED QUITO RECENTLY AND HIS DATA WAS COMPLETELY DIF-
FERENT FROM OURS. IF THE EVIDENCE IS WRONG IT CAN BE
PROVED WRONG TOMORROW AND CORRECTED. THERE ARE NO
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PAGE 04 GENEVA 02185 04 OF 04 272140Z

ABSOLUTE FACTS IN THIS AREA. WE FOUND IN OTTAWA THAT
THERE WAS ARGUMENT IN THE IATTC OVER SCIENTIFIC
EVIDENCE. WE WERE INTERESTED EVEN THOUGH WE DENOUNCED
THE IATTC WHEN WE FOUND THAT THE FACTS USED WERE VARIABLE.

MARTIN: FROM YOUR CONSULTATIONS COULD YOU SUGGEST WHAT
PERU'S REACTION WOULD BE IF W WERE TO APPROACH THEM ON
THIS IN CONNECTION WITH THE EVENSEN GROUP?

AYALA: PERU WOULD BE RECEPTIVE.

MOORE: AS A LAST POINT - WE WILL WANT TO STUDY THIS
DOCUMENT AND TRANSLATE IT AND SHOULD BE ABLE IN A DAY
OR TWO TO RESPOND - WE WILL BE COMING BACK TO YOU. WE
WILL WANT TO IDENTIFY AREAS OF AGREEMENT AND DIFFERENCE
AND SUGGEST ALTERNATIVES.

AYALA: CERTAINLY, WE WANT TO COOPERATE WITH YOU NOT
ONLY ON THIS BUT ON ANY ISSUE BEFORE US IN THE CONFERENCE.
UNQUOTE.

2. DEPT. PLEASE PASS AMEMBASSY QUITO BY CABLE OR
POUCH. DALE

NOTE BY OC/T: NOT PASSED.

SECRET

NNN

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